IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

OP.No. 11575 of 2003(C)

PETITIONER:

P.S.SEBASTIAN, PAMPLANY, ADUKKAM, TEEKOY

BY ADV. SRI.SHAJI THOMAS PORKKATTIL

RESPONDENTS:
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1. COMMISSIONER FOR WORKMAN'S COMPENSATION (DEPUTY LABOUR COMMISSIONER) KOTTAYAM.
2. MARY D/O. KARTHIYANI, THEKKADATHUPRAMBU VALLAKAM, VAIKOM, KOTTAYAM.
3. HYMAVATHY D/O. KARTHIYANI, DO.DO.
4. CHANDRAMATHY D/O. KARTHIYANI, DO.DO.
5. SARASWATHY D/O. DO.DO.DO.
6. RAJU S/O. KARTHIYANI, DO.DO.
7. PRAKASAN S/O. DO.DO.
8. MANONMANY S/O. DO.DO.
9. KUTTAPPAN, KUTTUKKALAYIL, MANNANAM.
10. S.K.KAVITHA, KUTTIKKALAYIL, MANNANAM.

BY GOVERNMENT PLEADER, SRI.T.T.MUHAMOOD
SRI. XAVIER (B/O) (R2 TO 10)
SRI.B.PREMOD (FOR R2, 4 TO 8 & 10)
SRI.T.R.SATHYAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A. NOS.11489/2007 C.M.P. NO.19817/2003 IN O.P.NO.11575/2003

CLOSED

SD/-
4-9-07. S.SIRI JAGAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE ORDER DATED 26.6.02 SERVED ON THE PETITIONER ON 7.2.03 BY REGISTERED POST.

EXT. P2: COPY OF THE COMMUNICATION LETTER DATED 26.2.03 ISSUED BY THE 1ST RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

JP

S. SIRI JAGAN, J.

OP NO. 11575 OF 2003 - C

Dated this the 4th day of September, 2007

J U D G M E N T

The petitioner challenges Ext.P1 order of the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Kottayam in W.C.C.No.22/94 whereby the petitioner was directed to pay compensation for the death of one Baburaj to his legal representatives. The petitioner challenges the third proviso to Section 30 of the Workmen's Compensation Act , 1923 (for short 'the Act') also, to maintain this writ petition in view of the fact that otherwise an appeal would lie under Section 30 of the Act. The contention of the petitioner is that the said proviso is arbitrary and violative of the fundamental right of the petitioner guaranteed under Article 14 of the Constitution of India. Regarding the challenge to the third proviso, I do not find any merit at all. That particular provision has been included in the statute for safeguarding the interests of

the workman and legal heirs of the deceased workman who suffers employment injury. The same cannot be termed either as onerous or arbitrary by any standards. Therefore, there is no merit in the challenge against the third proviso to Section 30 of the Act. As far as the challenge against Ext.P1 order is concerned, the petitioner's remedy lies in filing an appeal under Section 30 of the Act. That being so, I am not inclined to entertain this writ petition.

Accordingly, this writ petition is dismissed. However, the dismissal of this writ petition shall not preclude the petitioner from filing an appeal under Section 30 of the Act.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

O.P. NO. 11575 OF 2003

J U D G M E N T

DATED: 04-09-2007